Supreme Court, U.S.
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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1994

THOMAS W. WILSON,

Petitioner,

v.

DAVID W. BELIN and
G. ROBERT BLAKEY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Thomas W. Wilson, an electrical engineer who resides in Pennsylvania, gave a presentation at a symposium on the assassination of John F. Kennedy in Dallas, Texas on November 15, 1991, during which he shared his new and significant findings based on the application of computer technology (that he developed) to photographic evidence in the assassination case. During the symposium, but prior to Wilson's presentation, a *Dallas Times Herald* newspaper reporter who had previously interviewed Respondents David W. Belin and G. Robert Blakey for other articles on the subject of the JFK assassination, called respondents who reside in Iowa and Indiana respectively, to solicit comments from them concerning Wilson's findings. The defamatory remarks of Belin and Blakey were then made and thereafter published in a *Dallas Times Herald* article. The question presented is:

Whether non-residents Belin and Blakey are subject to personal jurisdiction in the State of Texas when they knew that their defamatory statements would be published in Texas while Wilson was appearing in Texas.

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No. _____

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THOMAS W. WILSON,

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v.

DAVID W. BELIN and
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On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

The petitioner Thomas W. Wilson respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at 20 F.3d 644. It is reprinted in the appendix to this petition at pp. A-1-16. The opinion of the district court is not

reported. It is reprinted in the appendix to this petition at pp. A-17-26.

JURISDICTION

The Court of Appeals entered its judgment on May 13, 1994. Timely petition for rehearing of that decision was denied on June 9, 1994.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

This is a suit by petitioner Thomas W. Wilson ("Wilson"), which arises from defamatory statements by respondents David W. Belin ("Belin") and G. Robert Blakey ("Blakey"), which were published in a *Dallas Times Herald* ("the Herald") newspaper article. The article and defamatory statements were about Wilson, his technological expertise, and his findings and conclusions regarding the application of his computer technology to photographic evidence related to the assassination of President John F. Kennedy.

Wilson presented his significant findings at a symposium on the assassination of President Kennedy that was held in Dallas, Texas, the site of the murder. During the symposium, but prior to Wilson's presentation, Mark Potok, a Dallas reporter for the Herald, telephoned Blakey, who served as chief counsel and staff director of the House Select Committee on Assassinations, to discuss

Wilson and his work. The reporter also called Belin, who served as assistant counsel to the Warren Commission, to discuss Wilson's findings. The phone calls were made from Dallas, and the reporter identified himself as a Dallas reporter for the Dallas newspaper working on a story about Wilson and his presentation at the symposium in Dallas. Both Blakey and Belin, who had previously been contacted by Potok on other stories that were published in the Dallas, Texas newspaper on the JFK assassination, received the calls in their respective states of residence – Indiana and Iowa.

On November 16, 1991, the Herald published in Dallas an article written by Potok that quoted Blakey as saying about Wilson and his findings: "This is garbage." The article also quoted Belin as saying about Wilson and his findings: "It's a series of massive lies. The man is basically making an outrageous claim."

Wilson filed a defamation suit against Belin and Blakey in a Dallas, Texas state court. Belin and Blakey removed the case to the United States District Court for the Northern District of Texas, Dallas Division, alleging diversity jurisdiction under 28 U.S.C. § 1332 (R. I-2-6). Wilson filed a motion to remand arguing that removal was not timely and that the requisite amount in controversy was not demonstrated in the pleadings. (R. I-49-52). Belin and Blakey then filed a motion to dismiss for lack of personal jurisdiction, challenging jurisdiction in Texas on federal constitutional grounds. (R. I-119-148). For purposes of the Texas long-arm statute, respondents conceded that they had committed a tort in Texas. (R. II-245). Without deciding the subject matter jurisdiction question

raised by the motion to remand,[1] the district court granted Belin and Blakey's motion to dismiss, holding that the telephone conversations with the Dallas newspaper reporter did not constitute "purposeful direction" and that Belin and Blakey could not have anticipated being haled into a Texas court. (pp. A-17-26, *infra*); (R. III-680-688). Wilson timely filed a motion for reconsideration. (R. III-689-738). After this motion was denied (P. A-27, *infra*), he timely filed his notice of appeal. (R. III-742-743).

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the decision of the district court and issued an opinion on May 13, 1994 (pp. A-1-16, *infra*). The appellate court rejected or ignored Wilson's argument that jurisdiction in Texas is warranted under the "injurious effects" test articulated by prior opinions of the United States Supreme Court and other federal court decisions. Without addressing the facts that the Herald reporter had previously contacted Belin and Blakey on other stories published in the Dallas, Texas newspaper on the JFK assassination, and that the Dallas reporter had their phone numbers for the express purpose of contacting them on Kennedy assassination articles that were written for his Dallas newspaper, the court of appeals held that neither Belin nor Blakey could have "reasonably anticipated being haled into court" and that they did not "purposefully direct" activities into the forum. According

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[1] Petitioner argued in the courts below that the district court erred in ruling on the respondents' objection to personal jurisdiction without ruling on petitioner's objection to the court's subject matter jurisdiction.

to the appellate court, since neither Blakey nor Belin supposedly had a plan of action to inject themselves or their opinions into the Texas forum and each supposedly only received one unsolicited phone call from Texas, the court held that assertion of specific personal jurisdiction would deprive them of the due process liberty interest not to be subjected to a suit in a distant forum with which they have little connection. (pp. A-1-16, *infra*).

Wilson filed a timely petition for rehearing which was denied on June 9, 1994. (P. A-28, *infra*).

REASONS FOR GRANTING THE WRIT

This case presents an important jurisdictional question involving precedents of this Court that were misapplied or misconstrued by the district court and by the court of appeals. Additionally, there are conflicts in opinions of federal courts at all levels including the interpretation of authority from this Court. As such, the decisions below are erroneous and the need for guidance from this Court is acute.

I.

The Question Presented is Important

The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful "contacts, ties, or relations." *International Shoe Co. v. Washington*, 326 U.S. 310, 319, 66 S.Ct. 154, 159-60, 90 L.Ed. 95 (1945); *Burger King Corp. v. Rudzewicz*, 471 U.S.

462, 471-72, 105 S.Ct. 2174, 2181, 85 L.Ed.2d 528 (1985). By requiring that individuals have fair warning that a particular activity may subject them to the jurisdiction of a foreign state, the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. at 472, 100 S.Ct. at 2182.

Since there is inconsistency between the decisions of the lower courts in this case and that of this Court and other federal court decisions, resolution of the jurisdictional issue by this Court would serve the dual purpose of clarifying the "fair warning" requirement and promote uniformity in decisions of federal jurisdictional questions on whether a defendant purposefully established "minimum contacts" in the forum state.

II.

The Opinion of the Court of Appeals Conflicts with Decisions of This Court And Lower Federal Courts and Is Erroneous

The opinion of the Fifth Circuit Court of Appeals (pp. A-1-16, *infra*) conflicts with prior decisions of this Court including *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), and *Keeton v. Hustler Magazine*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984), both of which are significant precedents on the issue of personal jurisdiction.

The judgment of the appellate court has ignored, and has thereby erroneously undermined, the "injurious effects" test established by this Court in *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984). Additionally, the fifth circuit failed to recognize that Belin and Blakey's actions were indeed aimed at Texas, since both Belin and Blakey knew that the reporter was from Dallas and that he was working on a story to be published in his Dallas newspaper about Wilson's presentation to be made in Dallas. Further, Belin and Blakey had both been contacted by the same Dallas reporter on previous stories published in Texas.[2] Since respondents knew that the

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[2] In the last paragraph of footnote 8 of the fifth circuit's opinion (pp. A-1-16, *infra*), the court dismisses Wilson's argument concerning the discovery dispute in this case. The court apparently misunderstood Wilson's argument. Wilson is not arguing for *more* time to conduct discovery, but more importantly, that the district court erred in assuming lack of evidence regarding Belin and Blakey's knowledge and purpose when the defamatory remarks were made (and whether their comments were directed at Texas) because they refused to respond to discovery concerning the very conversations with the reporter which gave rise to this suit. (BB Ex. D-1, p. 113; BB Ex. D-2, p. 65).

By way of example, at his deposition, Blakey was asked specific questions concerning his conversation with Mark Potok, but refused to answer:

Q: Do you acknowledge that you spoke with Mark Potok, the Dallas newspaper reporter, on or about November 15, 1991?

A: Yes.

Q: Can you state as specifically as possible all statements made to you by Mr. Potok in that conversation?

A: My counsel suggests that we object on the grounds of relevant and jurisdiction – not relevant to jurisdiction.

reporter was from Texas, worked for a Texas newspaper, and was working on a story about an event in Texas, and

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Q: All right. Can you state as specifically – well, let me go back. Are you refusing to answer?

A: I object – yes.

(BB Ex. D-2, p. 65)

In addition, similar questions were posed to Defendant Belin:

Q: Okay. You did not make any notes in regard to your conversation with Mr. Potok?

A: Correct.

Q: Do you have any recollection of that conversation?

A: Yes.

Q: What is it that you recall about the conversation?

Mr. McGraw: I am going to object. With respect to what Mr. Potok – with respect to what Mr. Belin may have said during that discussion, that goes directly to the merits of the litigation, and we are not going to permit Mr. Belin to testify with respect to those facts. We did identify in response to interrogatory 11 some information with respect to what Mr. Potok stated to defendant which we will permit Mr. Belin to discuss, again, for the reason it doesn't speak to the issue of whether there is jurisdiction over Mr. Belin.

Q: Mr. Belin, I just want the record to be clear. You are aware of the fact that this lawsuit arises from statements that you allegedly made to Mark Potok, a reporter for the Dallas Times Herald, on or about November 16, 1991. Are you aware of that?

A: That is what it purports to be based on.

Q: Okay. And my question to you then, sir, is can you tell me from your recollection what was said during that telephone conversation?

Mr. McGraw: That question on its face seems to me goes directly to the heart of the merits of the litigation. We think it may be relevant to be an understanding of the issues of jurisdiction to determine what were the circumstances surrounding the making of the call, what Mr. Belin understood the situation to be, but again, as I have said earlier, we are not going to require

they had been contacted previously by the same Texas reporter for other stories published in Texas, they should have reasonably anticipated that their defamatory comments would be published in Texas and being haled into a Texas court as a result, and they could have foreseen the effects of their comments made to the reporter.

In its opinion, the fifth circuit panel opined that petitioner Wilson read *Calder* too broadly by relying on the *Calder* opinion for the proposition that "whenever the effects of libel by a nonresident are felt in the forum state, specific jurisdiction exists" (P. A-8, *infra*); *Wilson v. Belin, et al.*, 20 F.3d 644, 648 (5th Cir. 1994), suggesting that if *Calder* should be so interpreted, a contrary opinion would have been reached in this case. In *Calder*, a California

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that plaintiff make a showing that there was a tort committed in whole or in part in the state of Texas in order sustain the jurisdictional motion, and as a result of that it is irrelevant what Mr. Belin said insofar as the proceeding that we are here in connection with.
(BB Ex. D-1, pp. 113-114).

Such discovery was obviously directly relevant to the personal jurisdiction inquiry, yet Blakey and Belin unjustifiably objected, thereby denying Wilson some of the very evidence that such Defendants claim is lacking on the jurisdictional issue. After attempts to have Defendants respond to the disputed discovery matters related to the jurisdictional issue, Wilson filed his Motion to Deem and to Compel with the district court before his response to Belin and Blakey's motion to dismiss was due. The district court never ruled on Wilson's motion despite the fact that a number of matters presented in the Motion were directly relevant to the issue of personal jurisdiction. Wilson was therefore deprived of relevant evidence and a fair opportunity to fully respond to Defendants' challenge to personal jurisdiction in Texas.

entertainer alleged libel against an author and an editor of a publication headquartered in Florida. This Court determined that the acts of the defendants were not untargeted negligence, but were expressly aimed at California as defendants knew that the article would have a potentially devastating impact on the plaintiff in California. *Calder*, 465 U.S. at 789-790, 104 S.Ct. at 1487. This Court reasoned that the defendants must have reasonably anticipated being subject to the jurisdiction of a California court. As the injury was actually suffered in California, it was not necessary to seek redress in a Florida court. *Id.*

Despite such authority and other holdings of this Court, the fifth circuit focused on irrelevant factors that should have no significant bearing on the jurisdictional issue. Instead of considering the fact that the injurious effects of respondents' remarks occurred in Texas, the appellate court considered it important that neither Belin nor Blakey did any preparation, such as writing or devising a story, and they did no research and they were unpaid. (P. A-8, *infra*); *Wilson*, 20 F.3d at 648.

The fifth circuit did not consider that the "injurious effects" test of *Calder* analyzes the *effects* of the actions in the forum which the defendants could have foreseen. *Brown v. Flowers Industries, Inc.*, 688 F.2d 328, 333-34 (5th Cir. 1982), *cert. denied*, 460 U.S. 1023, 103 S.Ct. 1275, 75 L.Ed.2d 496 (1983); See *D.J. Investments v. Metzeler Motorcycle Tire Agent Gregg, Inc.*, 754 F.2d 542 (5th Cir. 1985).

The fact that Belin and Blakey did not write or research the story has no bearing on the jurisdictional issue. This Court in *Calder* held that the defendants'

intentional, and allegedly tortious actions were expressly aimed at California and that they knew that the article would have a potentially devastating impact and that the brunt of the injury would be felt in California. *Calder,* 465 U.S. at 789, 104 S.Ct. at 1487. Similarly, the respondents in this case knew the Herald reporter from previous stories, that he worked for a Dallas, Texas newspaper, and that he was reporting on a symposium in Texas where Wilson was scheduled to speak. Their comments were aimed at Texas, and they should have known or foreseen that their comments would be published in the Herald, with primary circulation in Dallas, Texas, and that the article would have a potentially devastating impact on Wilson in Texas with the brunt of the injury felt in Texas. The fact that neither Belin nor Blakey wrote or researched the story, or that they were unpaid, is irrelevant.

A federal district court decision, which is directly analogous to the facts of this case, highlights the apparent confusion and lack of consistency in this area. In *Dion v. Kiev,* 566 F. Supp. 1387 (E.D. Penn. 1983), a reporter for *The Philadelphia Inquirer* telephoned an investor in a fitness club who lived in New York. The reporter was investigating the activities of the health club since it was facing financial difficulties. Soon thereafter, an article in *The Philadelphia Inquirer* was published which quoted the investor as saying that the clubs were "totally mismanaged." A defamation suit was filed against the investor in Pennsylvania where the publication occurred. In *Dion* (just as here), the defendant was fully aware that the reporter was employed by *The Philadelphia Inquirer* and that it was a major metropolitan newspaper in Pennsylvania with a major distribution in the Philadelphia area. *Id.*

As here, it was readily foreseeable to the defendant that his statements about the plaintiff could be published in the Philadelphia area and result in harm to the plaintiff. Based on these facts, the *Dion* court held that the defendant's conduct brought him within the requirements of the state's long-arm statute and that the exercise of personal jurisdiction would not offend due process. *Id.*

The facts in *Dion* are analogous to the facts in the case currently before the Court, and *Dion* is consistent with this Court's opinion in *Calder*. Of course in *Dion*, the proper focus is on the *effects* of the defendant's comments in the forum state. The defendant, like in the instant case, did not write, research or get paid for his story. Such facts are irrelevant.

The fifth circuit opinion also dwells on the fact that Wilson is not a Texas resident and his career is not centered in Texas. This is apparently another reason for the fifth circuit's holding that "the dispositive facts in *Calder* are simply absent from this case." (P. A-8, *infra*); *Wilson*, 20 F.3d at 648. However, the fifth circuit's emphasis in this regard conflicts with this Court's decision in *Keeton v. Hustler Magazine*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984), in which a New York resident brought suit against a magazine publisher and others alleging libel. The suit was brought in the United States District Court for the District of New Hampshire. This Court held in that case that the court of appeals erred when it affirmed dismissal of petitioner's suit for lack of jurisdiction. The Court noted that petitioner was suing for damages suffered in New Hampshire, and declared that "it is beyond dispute that New Hampshire has a significant interest in redressing injuries that actually

occur within the state." *Keeton*, 465 U.S. at 776, 104 S.Ct. at 1479.

Like the petitioner in *Keeton*, Wilson is not a resident of the forum state, but this fact is not determinative of the jurisdictional analysis, particularly since Wilson was in Texas (the forum) at the time of the defamatory publication. As stated in *Burt v. Board of Regents of University of Nebraska*, 757 F.2d 242, 245 (10th Cir.), *cert. granted sub nom., Connolly v. Burt*, 474 U.S. 1004, 106 S.Ct. 521, 88 L.Ed.2d 454 (1985), *vacated*, 475 U.S. 1063, 106 S.Ct. 1372, 89 L.Ed.2d 599 (1986), "no due process notions of fairness are violated by requiring one who intentionally libels another to answer for the truth of his statement in *any* state where the libel causes harm to the victim" (emphasis added).

Indeed, the fact that petitioner in *Keeton* was not a resident of the forum state was directly addressed by this Court. This Court held that jurisdiction was proper in New Hampshire despite the fact that the defamed party was not a resident of New Hampshire:

> New Hampshire may also extend its concern to the injury that in-state libel causes within New Hampshire to a nonresident. The tort of libel is generally held to occur wherever the offending material is circulated. Restatement (Second) of Torts § 577A. Comment a (1977). The reputation of the libel victim may suffer harm even in a state in which he has hitherto been anonymous. The communication of the libel may create a negative reputation among the residents of a jurisdiction where the plaintiff's previous reputation was, however small, at least unblemished.

Keeton, 465 U.S. at 776-77, 104 S.Ct. at 1479.

The dispositive inquiry therefore, as declared by this Court in *Keeton* and in *Calder* is the intentional nature of the defendant's conduct and its calculated injurious effect in the forum state. In this case, the offending material was knowingly published and circulated in Texas, and following authority of this Court in *Keeton* and *Calder*, jurisdiction is therefore proper in Texas.

CONCLUSION

For the reasons stated herein, a writ of certiorari should be granted in this case. The judgment of the court of appeals should be reversed and the case should be remanded to district court for further proceedings.

Respectfully submitted,

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APPENDIX

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Opinion [United States Court of Appeals for the Fifth Circuit] A-1

Memorandum Opinion and Order [United States District Court for the Northern District of Texas, Dallas Division] A-17

Order [on Rehearing] [District Court] A-27

On Petition for Rehearing [Court of Appeals] A-28

Thomas W. WILSON, Plaintiff-Appellant,

v.

David W. BELIN and G. Robert Blakey, Defendants-Appellees.

No. 93-1907
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

May 13, 1994.

Rehearing Denied June 9, 1994.

Pennsylvania resident filed defamation action in Texas state court against Indiana resident and Iowa resident. After removal, the United States District Court for the Northern District of Texas, Jerry Buchmeyer, J., dismissed action for lack of personal jurisdiction. On appeal, the Court of Appeals, E. Grady Jolly, Circuit Judge, held that: (1) assertion of specific personal jurisdiction over nonresident defendants would deprive them of their due process liberty interest, and (2) district court did not have general personal jurisdiction over nonresident defendants.

Affirmed.

D. Bradley Kizzia, Strasburger & Price, Dallas, TX, for plaintiff-appellant.

Thomas C. McGraw, Alan R. Richey, and Robert D. Sack, Gibson, Dunn & Crutcher, Dallas, TX, for Belin.

Kirte M. Kinser, McGuire, Craddock, Strother & Lutes, Dallas, TX, for Blakley [sic].

Appeal from the United States District Court for the Northern District of Texas.

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

The question presented in this case is whether a federal district court sitting in Texas has personal jurisdiction over two out-of-state defendants. In fact, none of the parties are Texas residents. The plaintiff, a Pennsylvania resident, filed this defamation suit in Texas state court against an Indiana resident and an Iowa resident. The genesis of this lawsuit is in a speech the plaintiff made in Dallas concerning the Kennedy assassination. A Dallas reporter telephoned the defendants in Indiana and Iowa, respectively, for a response to the speech. The reporter then purportedly quoted the defendants' reactions in a newspaper article. The plaintiff claims that the defendants' negative remarks libeled him in Texas. After removal, the federal district court dismissed the case for lack of personal jurisdiction. We affirm.

I

The plaintiff, Thomas W. Wilson, is a Pennsylvania resident, who used photographic image processing technology in his job as an engineer for U.S. Steel Corporation. Wilson began applying certain imaging technology – on his own time – to photographs of the assassination of President John F. Kennedy. Wilson claimed that his computer enhancements revealed a second gunman on the "grassy knoll" and revealed that a photograph of Lee

Harvey Oswald with a rifle had been tampered with. On November 15, 1991, Wilson spoke at a symposium in Dallas, Texas, on the Kennedy assassination and presented his "revelations."

During the symposium, Mark Potok, a reporter for the *Dallas Times Herald,* telephoned Robert Blakey, who served as chief counsel and staff director of the House Select Committee on Assassinations, to discuss Wilson's conclusions. The reporter also called David Belin, who served as assistant counsel to the Warren Commission to discuss Wilson's comments. Both Blakey and Belin received the calls in their respective states of residence – Indiana and Iowa.

On November 16, 1991, the *Dallas Times Herald* published an article written by Mr. Potok that quoted Mr. Blakey as saying, "You know the saying among computer people, 'Garbage in, garbage out?' This is garbage." The article quoted Mr. Belin as saying, "It's a series of massive lies. The man is basically making an outrageous claim."

II

On September 3, 1992, Wilson filed a bill of discovery in Texas state court to depose Potok to determine if he misquoted Blakey and Belin before instituting suit against them. On November 13, Wilson filed a defamation suit against Blakey and Belin in Texas state court. The suit and the original petition were received by the Texas Secretary of State, as agents for the nonresidents, on November 23. On December 22, Blakey and Belin filed a joint notice of removal citing diversity of citizenship.

On September 2, 1993, the district court granted Blakey and Wilson's [sic] motion to dismiss the case on the grounds that the court lacked specific and general personal jurisdiction over them. Wilson filed this appeal.

III

In a diversity suit, a federal court has personal jurisdiction over a nonresident defendant to the same extent that a state court in that forum has such jurisdiction. *Bullion v. Gillespie*, 895 F.2d 213, 215 (5th Cir.1990); Fed.R.Civ.P. 4(e). The reach of this jurisdiction is delimited by: (1) the state's long-arm statute; and (2) the Due Process Clause of the Fourteenth Amendment to the federal Constitution. *Bullion*, 895 F.2d at 215. Because the Texas long-arm statute extends to the limits of federal due process,[1] our two-step inquiry is reduced to an analysis of whether requiring Blakey and Belin to defend a defamation suit in Texas would impinge on their individual liberty interests – not to be subjected to suits in a distant forum with which they have little connection –

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[1] The Texas long-arm statute authorizes the exercise of jurisdiction over nonresidents "doing business," which includes committing a tort in whole or in part, in Texas. Tex.Civ.Prac. & Rem.Code Ann. § 17.02 (Vernon 1986). The Texas Supreme Court has interpreted the "doing business" requirement broadly, allowing the long-arm statute to reach as far as the federal constitution permits. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex.1990). Further, for purposes of the jurisdictional issue only, Blakey and Belin concede that a tort was committed in whole or in part in Texas via the publication of the newspaper article in a Texas newspaper. Thus, the outcome of this case turns wholly on the federal constitutional reach of personal jurisdiction.

that are protected by the Due Process Clause.[2] *See Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n. 10, 102 S.Ct. 2099, 2104 n. 10, 72 L.Ed.2d 492 (1982) (stating that the restriction on state power to subject a nonresident to suit is "ultimately a function of the individual liberty interest preserved by the Due Process Clause").

The exercise of personal jurisdiction over a nonresident will not violate due process principles if two requirements are met. First, the nonresident defendant must have purposefully availed himself of the benefits and protections of the forum state by establishing "minimum contacts" with that forum state. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945); *Bullion*, 895 F.2d at 216. And second, the exercise of jurisdiction over the nonresident defendant must not offend "traditioal notions of fair play and substantial justice." *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 113, 107 S.Ct. 1026, 1033, 94 L.Ed.2d 92 (1987) (citing *International Shoe*, 326 U.S. at 316, 66 S.Ct. at 158).

The "minimum contacts" prong of the inquiry may be further subdivided into contacts that give rise to "specific" personal jurisdiction and those that give rise to "general" personal jurisdiction. Specific jurisdiction is appropriate when the nonresident defendant's contacts with the forum state arise from, or are directly related to, the cause of action. *Helicopteros Nacionales de Colombia*,

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[2] The Due Process Clause provides, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

S.A. v. Hall, 466 U.S. 408, 414 n. 8, 104, S.Ct. 1868, 1872 n. 8, 80 L.Ed.2d 404 (1984); *Bullion*, 895 F.2d at 216. General jurisdiction, however, will attach, even if the nonresident defendant's contacts with the forum state are not directly related to the cause of action, if the defendant's contacts with the forum state are both "continuous and systematic." *Helicopteros*, 466 U.S. at 414 n. 9, 104 S.Ct. at 1872 n. 9; *Bullion*, 895 F.2d at 216.

If a nonresident defendant has sufficient related or unrelated minimum contacts with the forum, we must then consider whether the "fairness" prong of the jurisdictional inquiry is satisfied. *See Asahi*, 480 U.S. at 105, 107 S.Ct. at 1033; *Bullion*, 895 F.2d at 216. The Supreme Court has stated that the "fairness" of requiring a nonresident to defend a suit in a distant forum is a function of several factors, including the "interests of the forum State."[3] *Asahi*, 480 U.S. at 113, 107 S.Ct. at 1033.

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[3] The factors considered in the fairness inquiry are:

> [T]he burden upon the nonresident defendant; (2) the interests of the forum state; (3) the plaintiff's interest in securing relief; (4) "the interstate judicial system's interest in obtaining the most efficient resolution of controversies"; and (5) "the shared interest of the several States in furthering fundamental substantive social policies."

Bullion, 895 F.2d at 216 n. 5 (citing *Asahi*, 480 U.S. at 113, 107 S.Ct. at 1033 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S.Ct. 559, 563, 62 L.Ed.2d 490 (1980))).

IV

When the facts are not in dispute, we review *de novo* a district court's determination that its exercise of personal jurisdiction over a nonresident defendant is proper. *Bullion*, 895 F.2d at 216. "When a nonresident defendant presents a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing the district court's jurisdiction over the nonresident." *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir.1985). When the district court rules on the motion without an evidentiary hearing, the plaintiff may bear his burden by presenting a *prima facie* case that personal jurisdiction is proper. *Thompson v. Chrysler Motors Corp.*, 755 F.2d 1162, 1165 (5th Cir. 1985). "Moreover, on a motion to dismiss for lack of jurisdiction, uncontroverted allegations in the plaintiff's complaint must be taken as true, and conflicts between the facts contained in the parties' affidavits must be resolved in the plaintiff's favor for purposes of determining whether a *prima facie* case for personal jurisdiction exists." *Bullion*, 895 F.2d at 217 (quoting *D.J. Investments, Inc. v. Metzeler Motorcycle Tire Agent Gregg, Inc.*, 754 F.2d 542, 545 (5th Cir.1985)).

A

Wilson first argues that the district court had specific personal jurisdiction over Blakey and Belin because each of them spoke with a Texas newspaper reporter and thus reasonably could foresee that their defamatory comments would be published in Texas and injure Wilson's reputation in Texas. Wilson argues that *Calder v. Jones*, 465 U.S. 783, 789, 104 S.Ct. 1482, 1487, 79 L.Ed.2d 804 (1984)

clearly stands for the proposition that whenever the effects of libel by a nonresident are felt in the forum state, specific jurisdiction exists. We believe Wilson reads *Calder* too broadly.[4]

In *Calder*, 465 U.S. at 788-90, 104 S.Ct. at 1486-87, a reporter for a Florida publication researched a story in California, wrote a story about a California resident whose career was centered in California, and provided that story to his (the defendant reporter's) employer, which had a substantial portion of its national circulation in California. The Court stated that the defendants' (the reporter's and his editor's) "actions were expressly aimed at California" because they wrote and edited "an article that they knew would have a potentially devastating impact upon [the plaintiff in California]." *Id.* at 789, 104 S.Ct. at 1487. In the instant case, however, neither Blakey nor Belin did any preparation for a story to defame the plaintiff. They did not even write or devise a story. They did no research regarding Wilson's theory in Texas or elsewhere. Furthermore, there is no indication that these defendants were paid for their comments, that their comments were part of a planned business venture, or that such unsolicited comments served any role in advancing their business careers. Finally, the plaintiff, Wilson, is not a Texas resident and his career is not

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[4] We also note that First Amendment considerations regarding the defendants' abilities to inject their respective opinions into the marketplace of ideas on a topic of obvious public concern are not relevant to our wholly jurisdictional inquiry. *Calder*, 465 U.S. at 790-91, 104 S.Ct. at 1487-88.

centered there. Thus, the dispositive facts in *Calder* simply are absent from this case.

Wilson also places great weight on the premise that a libelous tort is deemed to have occurred where the offending material is circulated. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 777, 104 S.Ct. 1473, 1479, 79 L.Ed.2d 790 (1984) (citing Restatement (Second) of Torts § 577A, Comment *a* (1977)). This principle alone, however, will not win the day for Wilson. That the tort is deemed to have occurred in whole or in part in Texas is simply not dispositive of whether jurisdiction is appropriate. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 288-89, 100 S.Ct. 559, 562-63, 62 L.Ed.2d 490 (1980) (holding that although tort occurred in Oklahoma, New York defendant was not subject to personal jurisdiction in Oklahoma by nonresident plaintiff).

Wilson also argues foreseeability as a basis for specific personal jurisdiction. The defendants, he argues, could foresee that the defamatory remarks would be published in Texas. The Supreme Court has stated, however, that:

> "[F]oreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. . . . [T]he foreseeability that is critical to due process analysis is . . . that the defendant's conduct and connection with the forum State are such that he should *reasonably anticipate being haled into court there.*

World-Wide Volkswagen, 444 U.S. at 295, 297, 100 S.Ct. at 566, 567 (citations omitted) (emphasis added).

In this connection, the Supreme Court has held that a defendant could "reasonably anticipate being haled into

court" when he "purposefully directed" his activities and contacts into the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985). In *Burger King, id.*, the defendant had "purposefully directed" activities into the forum state when he mailed communications to the plaintiff's headquarters in the forum state, promised to send money into the forum state, and agreed to allow the forum state's law to govern the contract in dispute. Here, by contrast, Blakey and Belin took no planned action to inject themselves or their opinions into the Texas forum. Each simply received one unsolicited phone call from Texas. They sent no money or materials into Texas, and neither ever bound themselves to Texas law – even implicitly – concerning the disputed photographic interpretations in this case.

Similarly, the facts in the instant case are distinguishable from *Brown v. Flowers Indus., Inc.*, 688 F.2d 328 (5th Cir.1982), *cert denied*, 460 U.S. 1023, 103 S.Ct. 1275, 75 L.Ed.2d 496 (1983), where we held that personal jurisdiction in Mississippi was proper over an out-of-state resident who made a phone call to Mississippi to defame a Mississippi resident. In so holding, we emphasized that the defendant initiated the defamatory phone call. *Id.* at 334 & n. 15 (differentiating *McBreen v. Beech Aircraft Corp.*, 543 F.2d 26, 31 (7th Cir.1976), in which the court held that jurisdiction was improper, in part, because the defendant did not initiate the phone call). Here, the defendants did not execute a prearranged plan by initiating a communication to Texas aimed at a Texas resident. Instead, Blakey and Belin, while sitting unsuspectingly in their respective

offices in Indiana and Iowa, merely answered one uninitiated and unsolicited phone call asking about their opinion of a Pennsylvania resident's theory. We hold that the assertion of specific personal jurisdiction over Blakey and Belin would deprive them of the due process liberty interest not to be subjected to suit in a distant forum with which they have little connection.

B

Next, Wilson argues that the district court has general personal jurisdiction over Blakey and Belin because of the unrelated contacts each had with Texas. In resolving this issue we first turn to the Supreme Court's seminal case on this point: *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952). In *Perkins, id.* at 438, 72 S.Ct. at 438, the Supreme Court upheld the district court's exercise of general personal jurisdiction in Ohio over a Philipine corporation that had temporarily relocated to Ohio. The Court held that the corporation's general contacts with Ohio, although unrelated to the cause of action, would support the exercise of general personal jurisdiction because they were "continuous and systematic." *Id.* Some twenty years later, in *Keeton*, 465 U.S. at 779 n. 11, 104 S.Ct. at 1481 n. 11, the Supreme Court gave a concise explanation of why general jurisdiction was appropriate in *Perkins*. The *Keeton* Court, emphasized that unrelated contacts must be "substantial" in order to support general jurisdiction:

> In *Perkins*, . . . [the corporation's] president, who was also general manager and principal stockholder of the company, returned to his home in Ohio where he carried on "a continuous and

> systematic supervision of the necessarily limited wartime activities of the company. . . . " The company's files were kept in Ohio, several directors' meetings were held there, substantial accounts were maintained in Ohio banks, and all key business decisions were made in the State. . . . In those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State.

Id. (citations omitted).[5]

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[5] *Keeton* was an unusual case, as scholars have noted, because the Supreme Court used a blend of related and unrelated contacts to uphold personal jurisdiction. *See* GENE R. SHREVE & PETER RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE § 19A (1989). In *Keeton*, 465 U.S. at 772, 104 S.Ct. at 1477, an Ohio publishing corporation had only a small part of its monthly national circulation in New Hampshire. The Supreme Court reasoned that if these magazine sales were unrelated to the cause of action, they would be insufficient to warrant the exercise of personal jurisdiction. *Id.* at 779, 104 S.Ct. at 1481. The *Keeton* Court distinguished *Perkins* on the grounds that "[t]he defendant corporation's contacts with the forum State in *Perkins* were more *substantial* than those of [the publisher] with New Hampshire in this case." *Id.* at 779 n. 11, 104 S.Ct. at 1481 n. 11 (emphasis added). Other cases have echoed the substantiality requirement. *See, e.g., Helicopteros,* 466 U.S. at 471, 418-19, 104 S.Ct. at 1873-74 (refusing to uphold general jurisdiction over a foreign corporation that negotiated a contract in, purchased equipment from, and had its employees trained in the forum state because such activity did not constitute continuous and systematic unrelated contacts); *Holt Oil & Gas Corp. v. Harvey,* 801 F.2d 773, 779 (5th Cir. 1986), *cert. denied,* 481 U.S. 1015, 107 S.Ct. 1892, 95 L.Ed.2d 499 (1987) (upholding general jurisdiction over a nonresident defendant that attended college in, owned real estate in, travelled to, and conducted extensive business

In the instant case, Wilson argues that the assertion of general personal jurisdiction over Blakey is warranted because of his various unrelated contacts with Texas. Wilson first points to Blakey's relationship with a Texas law firm. Blakey carried his malpractice insurance through the Texas firm for less than a year. The record makes clear, however, that Blakey performed no work for and received no compensation from that firm. Wilson also points out that Blakey performed approximately one legal project per year – each for a different firm – in Texas for three years prior to the institution of this suit and gave a legal seminar in Texas. Additionally, Blakey served, in a limited capacity, as a *pro bono* consultant to a historical society in Dallas for several years; in this connection, he made two trips to Dallas, one in 1988 and one on opening day – February 21, 1989.[6] Further, Blakey wrote a letter to the editor that appeared in a Texas newspaper, and he wrote a book that was circulated, in part, in Texas. Finally, he gave a few interviews to Texas reporters over the years.

Wilson also asserts that Belin had a number of unrelated contacts with Texas that will support the exercise of general personal jurisdiction over him. Wilson points out that, in the last five years, Belin made a few trips to Texas

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dealings in the forum state to such an extent that, *in toto*, his contacts evidenced "constant and extensive personal and business connections with [the forum state] throughout [the nonresident defendant's] adult life").

[6] The "Sixth Floor Project" established a museum on the sixth floor of the Texas School Book Depository from which Lee Harvey Oswald is alleged to have fired the shots that fatally wounded President Kennedy.

during which he gave interviews concerning the Kennedy assassination. On one occasion, during a several-hour layover at a Dallas airport, Belin visited the Texas School Book Depository. Wilson further points out that on another occasion Belin engaged in discussions with an investment banking firm in Texas on behalf of a nonresident corporation in which he owned a small interest and served as secretary. Belin also wrote three books that were circulated, in part, in Texas. Finally, he wrote an article for the *Washington Post* that was reprinted in a Texas newspaper.

Our examination of Blakey's and Belin's activities in Texas, *in toto*, leads us to the conclusion that their unrelated contacts with Texas were not as "continuous and systematic" and, in any event, were not as "substantial" as the nonresident defendant's contacts in *Perkins*. We simply cannot say that because of these various brief contacts with Texas that either of these defendants should have reasonably expected to be sued in Texas on any matter, however remote from these contacts. They simply were not substantial enough to give rise to such an expectation.[7] Neither Blakey nor Belin conducted regular business in Texas. They never made all or even a substantial part of their business decisions in Texas, did not keep bank accounts in Texas, did not hold directors' meetings

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[7] Because we hold that Blakey and Belin do not have sufficient related or unrelated minimum contacts with Texas, we need not address whether the exercise of personal jurisdiction in this case would be consonant with "traditional notions of fair play and substantial justice." *See Asahi*, 480 U.S. at 113, 107 S.Ct. at 1033 (requiring both minimum contacts and fairness in order to assert personal jurisdiction); *Bullion*, 895 F.2d at 216 (same).

in Texas, and did not maintain their files in Texas. *Cf. Perkins*, 342 U.S. at 448, 72 S.Ct. at 419. Even if Blakey's contacts with Texas via his short-lived malpractice insurance arrangement through a Texas law firm and his multi-year *pro bono* association with the historical society were arguably continuous, we hold that they were not substantial enough to warrant the imposition of general personal jurisdiction over Blakey. *See Keeton*, 465 U.S. at 779 & n. 11, 104 S.Ct. at 1481 & n. 11. With respect to Belin, his contacts are sporadic and attenuated instead of continuous, and they are definitely not substantial. Consequently, we hold that the assertion of general personal jurisdiction over Blakey and Belin would deprive them of their respective due process liberty interests not to be subjected to suit in a distant forum with which they have little connection.[8]

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[8] Wilson makes several other arguments, all of which fail. First, Wilson argues that removal was improper because notice of removal was untimely. It is, of course, true that 28 U.S.C. § 1446(b) requires a defendant to file notice of removal within thirty days of receipt of the "initial pleading setting forth the claim for relief." Although plaintiff filed a bill of discovery more than thirty days prior to the defendant's removal, the first document stating a claim – the complaint – was filed less than thirty days prior to the defendants' filing of their joint notice of removal.

Second, Wilson argues that the complaint, which had no *ad damnum* clause, did not state claims that facially involved more than $50,000. Thus, removal was timely. Because the record contains a letter, which plaintiff's counsel sent to defendants stating that the amount in controversy exceeded $50,000, it is "apparent" that removal was proper. *See Marcel v. Pool Co.*, 5 F.3d 81, 84 (5th Cir.1993) (allowing removal when it was facially apparent that the claims exceeded $50,000).

Third, Wilson also argues that the district court erred in failing to rule on his motion to remand prior to ruling on the personal jurisdiction issue. Our precedent provides, however,

V

For the foregoing reasons, the order of the district court is

AFFIRMED.

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that district courts have the power to rule on personal jurisdiction before reaching motions to remand. *See Villar v. Crowley Maritime Corp.*, 990 F.2d 1489, 1494 (5th Cir.1993), *cert. denied*, ___ U.S. ___, 114 S.Ct. 690, 126 L.Ed.2d 658 (1994).

Finally, Wilson argues that the district court erred in not ruling on its motion to compel more discovery. We are satisfied that the district court, after granting several extensions to the plaintiff to file his motion in opposition to summary judgment and after reviewing the affidavits, answers, and interrogatories before it dismissed this case, did not abuse its broad discretion in this discovery matter. *See Wyatt v. Kaplan*, 686 F.2d 276, 283 (5th Cir.1982).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS W. WILSON, Plaintiff, vs. DAVID W. BELIN and G. ROBERT BLAKEY, Defendant.	§ § § § § § § §	CA 3-92-2633-R (Filed Sept. 2, 1993)

MEMORANDUM OPINION AND ORDER

Presently before this court is the defendants' joint motion to dismiss for lack of in personam jurisdiction. For the reasons set forth below, the court orders that this motion be GRANTED.

BACKGROUND

This case presents the court with issues involving telephonic jurisdiction. Mark Potok, a reporter for the Dallas Times Herald, wrote an article in that newspaper's November 16, 1991 edition regarding Mr. Wilson's assertions that sophisticated techniques of photography analysis have allowed him to locate President Kennedy's real killer, standing behind the infamous grassy knoll. Mr. Wilson spoke with Mark Potok while he was in Dallas to address a symposium of JFK assassination researchers. In preparing his article, Mr. Potok contacted the two defendants by telephone for their reactions to Mr. Wilson's claims. Mr. Potok reached Mr. Blakey at his office in

South Bend, Indiana; and Mr. Belin at his office in Des Moines, Iowa.

Mr. Blakey, who served as chief counsel and staff director of the House Select Committee on Assassinations, was quoted in Mr. Potok's article as saying "you know the saying among computer people, 'garbage in, garbage out.' This is garbage." For his part, Mr. Belin, who served as Assistant Counsel to the Warren Commission, was reported as stating "[i]t's a series of massive lies" and "[t]he man is basically making an outrageous claim."

Plaintiff filed an action for libel in state court. This action was then removed to this Court on December 22, 1992. Now before us is the Defendant's Motion to Dismiss for Lack of In Personam Jurisdiction.

ANALYSIS

1. General Principles of Personal Jurisdiction.

When a nonresident defendant moves to dismiss an action for lack of personal jurisdiction, the plaintiff bears the burden of establishing the district court's jurisdiction over the nonresident defendant.[1] The plaintiff, however, is only required to present a prima facie case for personal jurisdiction; proof by preponderance of the evidence is not required.[2] Moreover, on a motion to dismiss for lack of personal jurisdiction, the allegations contained in the

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[1] *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985).

[2] *D.J. Investments, Inc. v. Metzler Motorcycle Tire Agent Gregg, Inc.*, 754 F.2d 784, 785 (5th Cir. 1990).

plaintiff's complaint must be taken as true, except as controverted by the defendant's affidavits.[3] For purposes of determining whether a prima facie case for personal jurisdiction exists, all conflicts contained in the parties' affidavits must be resolved in the plaintiff's favor.[4]

Personal jurisdiction may be exercised over a party only if (1) the nonresident is amenable to service of process under Texas' long-arm statute, and (2) the exercise of jurisdiction under state law comports with the due process clause of the Fourteenth Amendment.[5] Because the Texas long-arm statute has been interpreted to extend to the limits of due process,[6] the only remaining inquiry is whether the assertion of the district court's jurisdiction over a nonresident defendant would be constitutionally permissible under the due process clause.

The due process clause test requires the satisfaction of two elements: (1) the nonresident must have some minimum contact with the forum that result from an affirmative act by the nonresident, such that the nonresident "purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws . . . ";[7] and (2) a court

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[3] *D.J. Investments, Inc.*, 754 F.2d at 545; *Asarco, Inc. v. Glenara, LTD*, 912 F.2d 784, 785 (5th Cir. 1990).

[4] *Id.*

[5] *See Thompson v. Chrysler Motors Corp.*, 755 FD.2d 1162, 1165 (5th Cir. 1985).

[6] *Hall v. Helicopteros Nacionales de Colombia*, 638 S.W.2d 870, 872 (Tex. 1982), rev'd on other grounds, 466 U.S. 408 (1984).

[7] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Growden v. El Bowlin & Associates, Inc.*, 733 F.2d 1149,

must determine whether it would be fair and reasonable to require the nonresident to defend the suit in the forum state.[8]. The defendant's contact with the forum state must be such that it should reasonably anticipate being haled into court in the forum state.[9]

A district court may exercise either "specific" or "general" jurisdiction over a nonresident defendant.[10] Specific jurisdiction flows from the nonresident's contacts with the forum related to the particular controversy that forms the basis for the action.[11] It causes the minimum contacts inquiry to focus on the relationship between the defendant, the forum, and the litigation.[12]

General jurisdiction, on the other hand, flows from the nonresident's contacts with the forum that are unrelated to the controversy.[13] In order for a district court to exercise general jurisdiction, it must conclude that a nonresident's contacts with the forum are sufficiently systematic and continuous to support the reasonable exercise of jurisdiction.[14]

Even if sufficient minimum contacts exist between a nonresident and the forum state, a district court still may

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1151 (5th Cir. 1984) (*quoting Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

[8] *D.J. Investments, Inc.*, 754 F.2d at 545.

[9] *Growden*, 733 F.2d at 1151.

[10] *Asarco, Inc.*, 912 F.2d at 786-87.

[11] *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977).

[12] *Id.*

[13] *Id.*

[14] *Id.*

not exercise personal jurisdiction unless the suit "comports with traditional notions of fair play and substantial justice."[15] It must be fair and reasonable to require a nonresident to defend itself in the forum state. However, fairness alone will not permit a court to exercise jurisdiction over a nonresident when the minimum contacts analysis weighs against exercising jurisdiction.

2. *Personal jurisdiction in this case.*

A. Minimum Contacts.

Defendants' contacts with the state are not sufficiently "continuing and systematic" so as to confer this court with general jurisdiction over them. The issue, therefore, is whether this court can exercise specific jurisdiction over the defendants. In other words, should their statements over the phone to a Dallas reporter subject the defendants to jurisdiction in Texas?

When a forum seeks to establish specific personal jurisdiction over a nonresident defendant, due process requires that there be fair warning that a particular activity may subject him to personal jurisdiction in that forum.[16] This fair warning requirement is satisfied if the defendant purposefully directed his activities toward the forum state.[17] Defendants rightly argue that it would be senseless to find that their answering the telephone and

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[15] *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

[16] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

[17] *Asahi Metal Ind. Co. v. Super Ct.*, 480 U.S. 102, 112 (1987); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

speaking to a Dallas reporter constituted "purposeful direction."[18]

Two very similar personal jurisdiction cases also involving reporters calling out-of-state sources are of great value to this court in making its determination. In *Cancer Treatment Centers of America, Inc. v. Winn*,[19] it was recently held in this district that receipt of a phone call from an out-of-state reporter was insufficient to establish specific jurisdiction over the defendants. In that case, a *Dallas Morning News* reporter telephoned several prominent doctors residing in various states to obtain their views on the management of a hospital. When these opinions appeared in an article, the hospital sued the out-of-state doctors for libel. The court, however, held that the defendants' contacts with the forum state were insufficient to establish personal jurisdiction.

Furthermore, in *McBreen v. Beech Aircraft Corporation*,[20] the Seventh Circuit also resisted finding personal jurisdiction over an out-of-state defendant who answered the phone and found himself talking to a reporter from the forum state. The defendant in that case was a Kansas attorney who took questions regarding pending litigation from a *Business Insurance* reporter. The plaintiff seeks to distinguish *McBreen* because in that case the attorney did not know where the reporter was calling from, or even

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[18] Defendant David W. Belin's Reply to Plaintiff's Response to Defendants' Joint Motion to Dismiss for Lack of In Personam Jurisdiction, p. 6.

[19] Memorandum Opinion, 3:92-CV-1574-C (N.D. Tex. 1992) (Fish, J.), slip opinion.

[20] 543 F.2d 26 (7th Cir. 1976).

the publication's areas of distribution.[21] We do not agree wit the plaintiff, however, that this is a crucial distinction.

Taking a phone call from an out-of-state reporter – whether or not the reporter makes known her publication's areas of distribution – does not, to use the Fifth Circuit's language, "suggest that the nonresident defendant has availed himself of the benefits of the forum state."[22] For the Supreme Court, this purposeful availment essential to the due process analysis amounts to foreseeability "that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there . . . "[23]

In the present case, we hold that the defendants could not have anticipated being haled into court in this forum state. Therefore, defendants' requisite minimum contacts with the forum state have not been established.

B. Fair Play and Substantial Justice.

The second prong of the due process test requires that the exercise of jurisdiction comports with "fair play and substantial justice."[24] Factors to be examined include (1) the burden on the defendant, (2) the interests of the forum state in adjudicating dispute, (3) the plaintiff's

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[21] *Id.* at 28.

[22] *Brown v. Flowers Industries, Inc.*, 688 F.2d 328, 332-33 (5th Cir. 1982), *cert. denied*, 460 U.S. 1023 (1983).

[23] *World-Wide Volkswagen*, 444 U.S. at 297.

[24] *Guardian Royal Exchange v. English China*, 815 S.W.2d 223, 226 (Tex. 1991), *citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985).

interest in obtaining convenient and effective relief, (4) the shared intrastate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies.[25]

Weighing these various factors, we find that the exercise of personal jurisdiction over the defendants does not comport with fair play and substantial justice. It was the plaintiff, not the defendants, who availed himself of the opportunity to do business in the forum state. From the defendants' vantage point, it is merely fortuitous that the phone call from the reporter came from Texas instead of any other state.

Moreover, Texas has little interest in providing a forum for this suit. Neither aggrieved plaintiff nor defendants are Texas residents.[26]

For these reasons, we find that this court's exercise of jurisdiction in this case runs counter to the "fair play and substantial justice" prong of the due process test.

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[25] *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *Burger King Corp. v. Rudzewicz*, 471 U.S. at 477.

[26] *See Madara v. Hall*, 916 F.2d 1510, 1519 (11th Cir. 1990) (forum has little interest in adjudicating an action where no party resides in the state).

CONCLUSION

The Court therefore finds that it has no personal jurisdiction over the defendants. Consequently, the defendants' motion to dismiss is hereby GRANTED.

SIGNED THIS 1 DAY OF SEPT., 1993.

/s/ Jerry Buchmeyer
UNITED STATES DISTRICT JUDGE
JERRY BUCHMEYER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS W. WILSON,	§	
Plaintiff,	§	
	§	
VS.	§	**CA 3-92-CV-2633-R**
DAVID W. BELIN and G. ROBERT BLAKEY,	§	
	§	
Defendants.	§	

ORDER

(Filed Sept. 2, 1993)

For the reasons stated in this Court's Memorandum Opinion, this case is DISMISSED, with costs taxed against the Plaintiff.

SIGNED this 2nd day of September, 1993.

/s/ Jerry Buchmeyer
JERRY BUCHMEYER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS W. WILSON,	§	
PLAINTIFF,	§	
	§	
VS.	§	**3:92-CV-2633-R**
DAVID W. BELIN, ET AL,	§	
	§	
DEFENDANTS.	§	

ORDER

(Filed Sept. 27, 1993)

Every point raised in the plaintiff's Motion for Rehearing and/or Reconsideration (filed September 17, 1993) was raised in the prior – and voluminous – briefs previously filed in this case.

Nevertheless, this Court again studied each of these points – and it remains firmly convinced that the Memorandum Opinion of September 2, 1993 is correct. Accordingly, the Motion for Rehearing and/or Reconsideration is DENIED.

SIGNED ON THE 27th DAY OF SEPTEMBER, 1993.

/s/ Jerry Buchmeyer
JERRY BUCHMEYER
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1907

THOMAS W. WILSON,

Plaintiff-Appellant,

VERSUS

DAVID W. BELIN, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

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ON PETITION FOR REHEARING

(Filed June 9, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/s/ E. Grady Jolly
United States Circuit Judge